

The temporary storage exemption is available for tangible personal property which is "acquired outside this State and which subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this State." 86 Ill. Adm. Code 150.310(a)(4). (This is a GIL).

December 23, 1999

Dear Xxxxx:

This letter is in response to your letter dated November 18, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Request: To determine if Illinois sales tax is due on the specific transaction outlined in this letter.

Overview: Fabric is purchased by COMPANY, a hotel located in STATE, from BUSINESS.

Fabrics ship (FOB shipping point) from BUSINESS warehouse in CITY/STATE. The purchase orders placed by CORPORATION to BUSINESS call for the fabric to be shipped by common carrier to PERSON located in CITY, IL. PERSON will be fabricating draperies and bedspreads out of this fabric on behalf of COMPANY. The fabricated items will then be sent out of state by PERSON to the hotel located in STATE.

COMPANY is not a tax-exempt institution. They do not have nexus in Illinois.

BUSINESS, a wholesaler of fabric, has nexus in IL. Our sales tax registration number in Illinois is: #####. We are charging IL sales tax on all shipments into IL.

Orders are shipped on 'Net 30' (open) terms, by common carrier. The fabrication and subsequent reshipment of the product may or may not take place prior to payment due, or received, on this order. The workroom will bill the hotel for the fabrication.

Resolution: Are these transactions considered taxable? If not, what certification is needed? How do we handle the refund of sales tax? Is the timing of payment on this order relevant to the determination of taxability? Where does title pass, at time of shipment, time of delivery, or at the time that payment is received? Please respond.

Response: Response and questions should be directed to PERSON2.

Enclosed is a copy of 86 Ill. Adm. Code 150.310 concerning "Exemptions to Avoid Multi-State Taxation." The temporary storage exemption is available for tangible personal property which is "acquired outside this State and which subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this State." 86 Ill. Adm. Code 150.310(a)(4).

As you can see, this exemption only applies to transactions in which the materials are acquired outside this State and after their temporary stay in Illinois are shipped out of Illinois and used solely outside Illinois. When property is located in Illinois at time of sale, or if such property is not acquired outside this State, the transaction is an Illinois retail sale subject to Retailers' Occupation Tax liability. Temporary storage is not applicable in transactions where there is Retailers' Occupation Tax liability because the exemption is limited to situations where the only liability that can be involved is Use Tax. See 86 Ill. Adm. Code 150.310(b), enclosed.

In order to properly document this exemption, purchasers should give certificates to their sellers which state that the raw materials are acquired outside Illinois and brought into Illinois only temporarily for converting, fabricating, manufacturing, printing, processing, or shaping, and are subsequently shipped out of Illinois to be used solely outside the State of Illinois.

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. Only the persons remitting tax to the Department are authorized to file such claims. No credit shall be given the taxpayer unless the taxpayer shows that it has borne the burden of the tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected. See the enclosed copy of 86 Ill. Adm. Code 130.1501. The statute of limitations for filing a claim for credit is 3 to 3 1/2 years and expires in 6 month blocks.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.